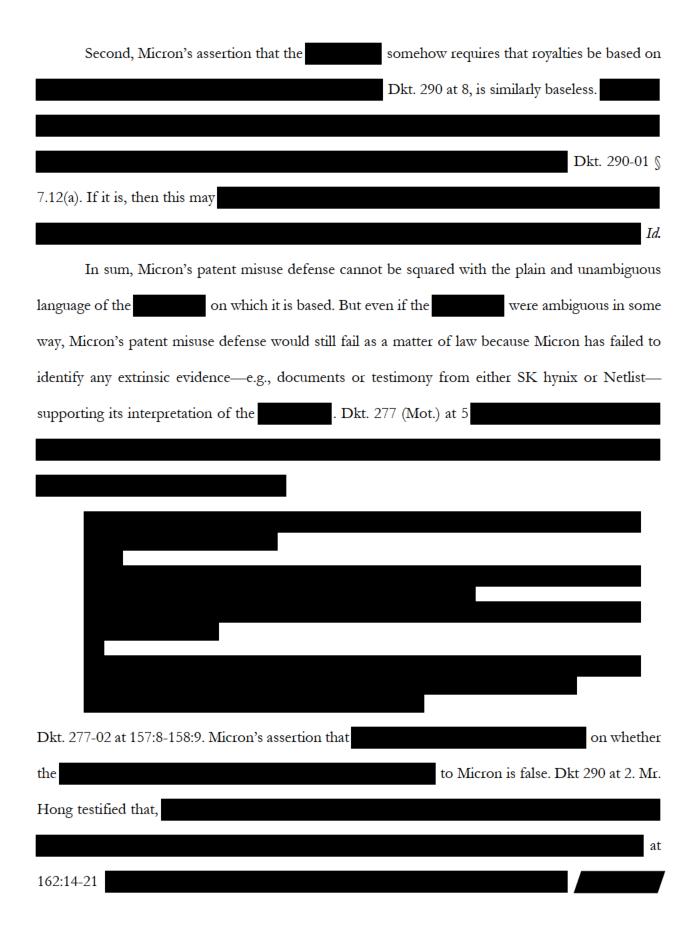
IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF TEXAS MARSHALL DIVISION

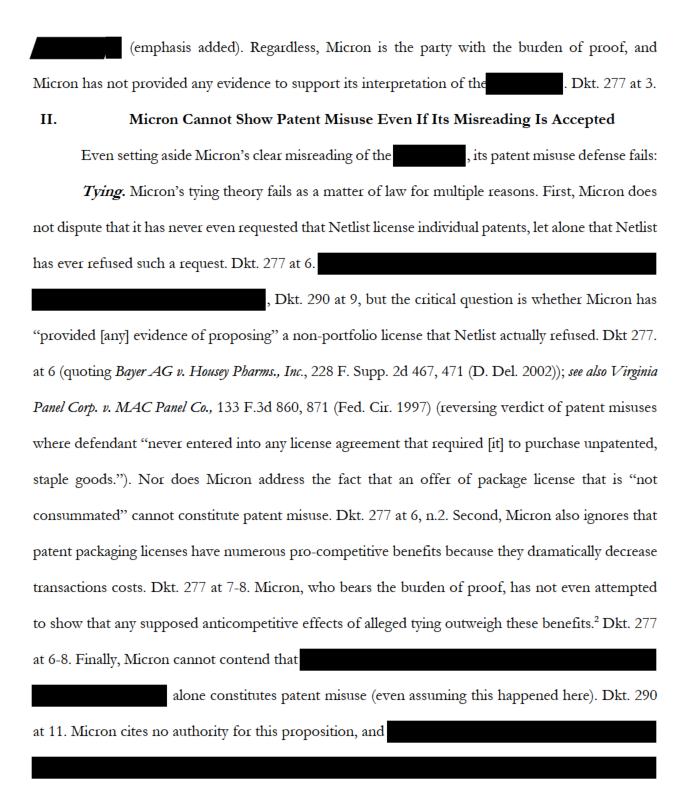
NETLIST, INC.,)
Plaintiff,)
VS.) Case No. 2:22-cv-203-JRG
MICRON TECHNOLOGY, INC.; MICRONSEMICONDUCTOR PRODUCTS, INC.; MICRON TECHNOLOGY TEXAS LLC.) JURY TRIAL DEMANDED))
Defendants.)

PLAINTIFF NETLIST INC.'S MOTION FOR SUMMARY JUDGMENT OF NO PATENT MISUSE (DKT. 277)

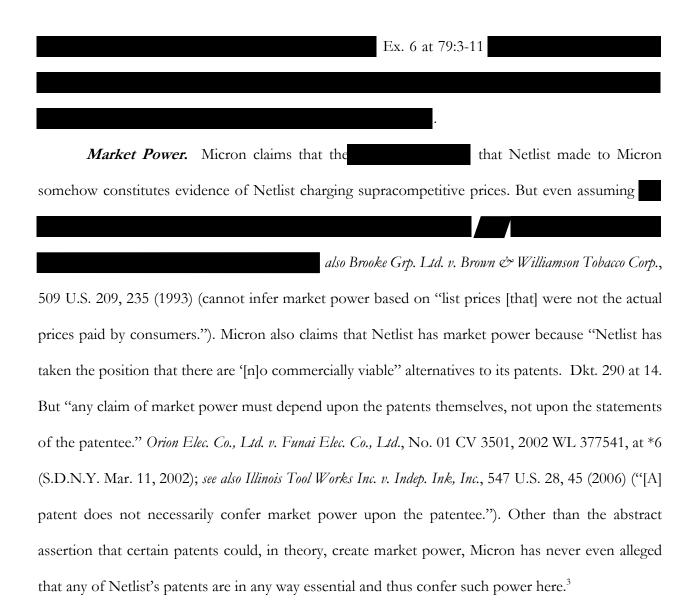
I. Micron's Patent Misuse Defense Is Predicated On A Misreading Of the Micron continues to ignore the key language of the SK hynix License—sections 7.12(a) and 7.12(b)—explaining how the functions. Those provisions unequivocally state that, if Dkt. 290-01 § 7.12. Micron's interpretation renders these provisions meaningless. See, e.g., Miscione v. Barton Dev. Co., 52 Cal. App. 4th 1320, 1330 (1997) (rejecting contract interpretation because "violate[d] the rule of contractual interpretation that requires meaning to be given to every part of a contract"). If the Ignoring sections 7.12(a) or 7.12(b), Micron instead relies on a plain misreading of two isolated sentences in the . First, Micron claims that the Dkt. 290 (Opp.) at 11 (quoting Dkt. 290-01 § 7.12). But this language simply defines what constitutes a In other words, Indeed, Micron's interpretation directly contradicts the subsequent paragraph, which lists Dkt. 290-01 § 7.12(a) (emphasis added).

¹ The SK hynix License is governed by California law. Dkt. 290-01 at 13.





² Micron's citations to *McCullough Tool* and *Paramount Pictures* are inapposite because those cases involved IP-to-product tying, not patent-to-patent tying which is pro-competitive. *See U.S. Philips Corp. v. Int'l Trade Comm'n*, 424 F.3d 1179, 1188 (Fed. Cir. 2005).



Royalty base. Finally, Micron's claim that Netlist supposedly requires that royalties be based on "all Micron memory products whether they infringe or not" does not constitute patent misuse (even assuming this is true) Dkt. 290 at 13. It is a common practice to base royalties on total sales rather than infringement since it is often "impossible to determine whether a specific product is 'covered by' a patent without litigation," which would defeat the very purpose of entering into a license in the first place. See Texas Instruments v. Hyundai Elecs., 49 F. Supp. 2d 893, 901 (E.D. Tex. 1999).

³ Micron concedes that a mere breach is not patent misuse. Dkt. 290 at 15.

Dated: December 6, 2023

Respectfully submitted,

/s/ Jason G. Sheasby

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CERTIFICATE OF SERVICE

I hereby certify that, on December 6, 2023, a copy of the foregoing was served to all counsel of record.

<u>/s/ Yanan Zhao</u> Yanan Zhao

CERTIFICATE OF AUTHORIZATION TO FILE UNDER SEAL

I hereby certify that the foregoing document and exhibits attached hereto are authorized to be filed under seal pursuant to the Protective Order entered in this Case.

<u>/s/ Yanan Zhao</u> Yanan Zhao